# In the Supreme Court of the United States

OCTOBER TERM, 1968

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No. 1166

RONALD GERHARD (AS CLAIMANT OF 440 U.S. GOLD COINS AND ONE 1961 CHEVROLET AUTOMOBILE), PETITIONER

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals is not yet reported.

### JURISDICTION

The judgment of the court of appeals was entered on December 17, 1968. The petition for a writ of certiorari was filed on March 17, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

## QUESTION PRESENTED

Whether Congress had the power to enact laws which provided for the forfeiture of gold coins smuggled into the United States from Canada.

## STATUTES AND REGULATIONS INVOLVED

31 U.S.C. 442 provides:

> The Secretary of the Treasury shall, by regulations issued hereunder, with the approval of the President, prescribe the conditions under which gold may be acquired and held, transported, melted or treated, imported, exported, or earmarked: (a) for industrial, professional, and artistic use; (b) by the Federal Reserve banks for the purpose of settling international balances; and (c) for such other purposes as in his judgment are not inconsistent with the purposes of sections 315b, 405b, 408a, 408b, 440-446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title and sections 213, 411-415, 417, and 467 of Title 12. Gold in any form may be acquired, transported, melted or treated, imported, exported, or earmarked or held in custody for foreign or domestic account (except on behalf of the United States) only to the extent permitted by, and subject to the conditions prescribed in, or pursuant to, such regulations. Such regulations may exempt from the provisions of this section, in whole or in part, gold situated in places beyond the limits of the continental United States.

31 U.S.C. 443 provides:

> Any gold withheld, acquired, transported, melted or treated, imported, exported, or ear-

> marked or held in custody, in violation of sections 315b, 405b, 408a, 408b, 440-446, 733, 734, 752, 753, 754a, 754b, 767, 771, 821, 822a, 822b, and 824 of this title and sections 213, 411-415, 417, and 467 of Title 12 or of any regulations issued hereunder, or licenses issued pursuant thereto, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law; and in addition any person failing to comply with the provisions of said sections or of any such regulations or licenses, shall be subject to a penalty equal to twice the value of the gold in respect of which such failure occurred.

31 C.F.R. 54.20 provides in pertinent part:

> (a) Gold coin of recognized special value to collectors of rare and unusual coin may be acquired, held, and transported within the United States without the necessity of holding a license therefor. Such coin may be imported, however, only as authorized by this section or §§ 54.28 to 54.30, 54.34, 54.40, or licenses issued thereunder, and exported only in accordance with the provisions of § 54.25.
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> (b) Gold coin made prior to April 5, 1933, is considered to be of recognized special value to collectors of rare and unusual coin.

## STATEMENT

On the evening of February 26, 1965, petitioner was arrested by customs agents after he crossed the Canadian border near Cherubusco, New York, in an automobile. A search of the car uncovered 440 gold United

States coins [1] secreted in a seat and in the arm rests. Thereafter, petitioner was charged in the United States District Court for the Northern District of New York with introducing the coins into the United States by means of false statements (Count 1) and smuggling (Count 2), in violation of 18 U.S.C. 542 and 545. On December 17, 1966, he pleaded guilty to count 1, and thereafter was sentenced to probation for three years and fined $1,000.[2]

Following the conviction, the government instituted proceedings in the Northern District of New York to forfeit the gold coins and petitioner's automobile. The libel of forfeiture alleged that the attempt by petitioner to introduce the gold coins in interstate commerce was contrary to 31 U.S.C. 442 and 31 C.F.R. 54.20, as well as 18 U.S.C. 542, 18 U.S.C. 545, and 12 U.S.C. 95a and that, accordingly, the coins and petitioner's automobile became subject to forfeiture under 31 U.S.C. 443 and 19 U.S.C. 1460. Following a hearing, the district court ordered the forfeiture (R. 137-147) and the court of appeals affirmed.

## ARGUMENT

Petitioner argues that there is no provision in the Constitution for the federal government to control gold, and that the right of the people to own such a

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[1] The coins were of the following denominations: 320 $20 liberty head coins, minted between 1900 and 1907, 10 $10 Indian head coins, dated 1907-1913, and 110 $5 liberty head coins, dated 1857-1907 (R. 98, 102 and accompanying papers).

[2] Count 2 was dismissed on the government's motion.

commodity is guaranteed by the Ninth Amendment. The Constitution, however, vests in the Congress powers to lay and collect taxes, coin money and regulate its value, fix the standards of weights and measures, regulate commerce, and to make all laws which are necessary and proper to carry out these powers. In 1934, Congress passed the Gold Reserve Act, 31 U.S.C. 440, and other laws designed to provide a sound monetary system. H. Rep. No. 292, S. Rep. No. 201, 73rd Cong., 2d Sess., accompanying H.R. 6976. The Congressional power to regulate the holding of gold has repeatedly been upheld. See *Norman* v. *Baltimore & Ohio Railroad Co.*, 294 U.S. 240, 295-297; *Hunsaker* v. *United States*, 279 F. 2d 111 (C.A. 9); *Laycock* v. *Kenney*, 270 F. 2d 580 (C.A. 9), certiorari denied, 361 U.S. 933; *Farber* v. *United States*, 114 F. 2d 5 (C.A. 9), certiorari denied, 311 U.S. 706.

One of the provisions of the Gold Reserve Act, 31 U.S.C. 442, empowered the Secretary of the Treasury to prescribe the conditions under which gold could be imported. Pursuant to this authority, the Secretary promulgated a rule requiring a license to import gold coin. 31 C.F.R. 54.20. The Gold Reserve Act provides for the forfeiture of gold transported, acquired, or imported in violation of the law. 31 U.S.C. 443. In this case it is undisputed that petitioner had no license to import gold coins from Canada (R. 147). The coins were therefore properly subject to forfeiture.

Moreover, Congress has the constitutional power to control importation of any goods from a foreign country. *Buttfield* v. *Stranahan*, 192 U.S. 470, 492-493.

One section of the Tariff Act of 1930, 19 U.S.C. 1460, provides in pertinent part:

> * * * If any merchandise is imported or brought into the United States in any vessel or vehicle * * * from a contiguous country, which vessel, vehicle, or merchandise is not so reported to the proper customs officers * * * such merchandise and the vessel or vehicle, if any, in which it was imported or brought into the United States shall be subject to forfeiture * * *.

In addition, under 18 U.S. 545 merchandise smuggled into this country is to be forfeited to the United States. Thus petitioner's gold coins and automobile were properly ordered forfeited when the evidence at the hearing showed that petitioner had smuggled the coins into the United States from Canada without reporting them to customs officers. See *United States* v. *Kushner*, 135 F. 2d 668 (C.A. 2), certiorari denied, 320 U.S. 212; *Lozano* v. *United States*, 17 F. 2d 7 (C.A. 5).

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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